

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
High Peaks Broadcasting, LLC	)	
	)	
Licensee of Station KXDC	)	File No. EB-01-DV-446
Estes Park, Colorado	)	
Facility ID # 76780	)	
	)	
Licensee of Station KXUU-FM1	)	File No. EB-01-DV-020
Boulder, Colorado	)	
Facility ID # 106692	)	
	)	
	)	NAL/Acct. No. 200232800009
	)	FRN # 0005-2590-07

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released:** June 28, 2002

By the District Director, Denver Office, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that High Peaks Broadcasting, LLC ("High Peaks"), licensee of FM radio station KXDC<sup>1</sup>, Estes Park, Colorado, and FM booster station KXUU-FM1 in Boulder, Colorado, has apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934 ("Act")<sup>2</sup>, as amended, by operating two unlicensed studio-to-transmitter links ("STL") and has apparently willfully violated Section 74.1235(c) of the Commission's Rules ("Rules")<sup>3</sup> by operating booster station KXUU-FM1 with power in excess of that authorized. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),<sup>4</sup> that High Peaks is apparently liable for a forfeiture in the amount of twenty-four thousand dollars (\$24,000).

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<sup>1</sup> At the time of inspection, KXDC was operating under call sign KXUU. Effective June 10, 2002, the call sign was changed to KXDC. The booster station continues to operate under call sign KXUU-FM1. An application to change the call sign to KXDC-FM1 is pending.

<sup>2</sup> 47 U.S.C. § 301.

<sup>3</sup> 47 C.F.R. § 74.1235(c).

<sup>4</sup> 47 U.S.C. § 503(b).

## II. BACKGROUND

2. On April 17 and April 18, 2001, a Denver Office Agent conducted an inspection of the KXDC and KXUU-FM1 studio and transmitting facilities. FM station KXDC is authorized by the FCC to operate on 102.1 MHz to serve Estes Park, Colorado. The main transmitter is authorized to operate from a site located 0.54 miles west of the intersection of Route 7 and Serenity Road, just outside of Estes Park. On February 12, 2001, High Peaks was granted a license for a FM booster station, KXUU-FM1, to serve the principal community of Boulder, Colorado, on frequency 102.1 MHz.<sup>5</sup> KXUU-FM1 is authorized to operate with an effective radiated power ("ERP") of 175 watts and a center of radiation 40 meters above ground level ("AGL") from a communication site on Lee Hill, approximately 8.5 kilometers northwest of Boulder, Colorado. KXDC maintains a main studio at 131 Stanley Avenue in Estes Park, Colorado, and an alternate studio at 8975 East Kenyon Street in Denver, Colorado.

3. At the time of the inspection, KXDC was operating an aural STL on 949.0 MHz to transmit programming from the Mountain View Bible Fellowship Church located at 1575 South St. Vrain in Estes Park to the main transmitter site. A check of the FCC records found no license on file for KXDC to operate a STL on 949.0 MHz.

4. During the inspection, the Denver Office Agent also found that KXUU-FM1 was operating an aural STL on 951.5 MHz to transmit programming from a tower on Wasach Road, in Longmont, Colorado, to the booster transmitter communications site on Lee Hill. A check of the FCC records found no license on file for KXUU-FM1 to operate a STL on 951.5 MHz.

5. The Denver Office Agent also found that KXUU-FM1 was transmitting with an ERP of 333 watts. This is approximately 90% over the authorized power of 175 watts. The signal for KXUU-FM1 could be heard in the southern part of Denver, approximately 75 miles from Estes Park and far outside the 60 dbu (1 mV/m) contour of KXDC.

6. On the afternoon of April 18, 2001, after being advised by the FCC Agents of the outstanding rule violations found during the inspection, including the overpower operation and unlicensed STLs, both KXDC and KXUU-FM1 went off-the-air voluntarily. The stations remained off-the-air for several days until such time that the booster complied with the terms of the booster license and the STLs could operate legally under the provisions of Part 74.24 of the Commission's Rules, 47 C.F.R. § 74.24.

7. On April 20, 2001, Denver Office Agents spoke with KXDC and KXUU-FM1 personnel regarding the unlicensed STLs and overpowered operation of the booster station. During this meeting High Peaks personnel admitted the STLs were not licensed, but asserted it was an oversight and they would obtain the required licenses.

8. On May 23, 2001, High Peaks received licenses and associated call signs WPSJ746 for the STL on 951.5 MHz, and WPSJ786 for the STL on 949.0 MHz.

## III. DISCUSSION

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<sup>5</sup> KXUU-FM1 FCC File No. BLFTB-20000815ACT. Boulder is approximately 35 miles southeast of Estes Park.

9. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>6</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>7</sup> Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.<sup>8</sup> The Rules governing the licensing and operation of aural broadcast auxiliary stations, including STLs used by FM radio stations are set forth under Subpart E of Part 74 of the Rules.<sup>9</sup> On April 17 and April 18, 2001, High Peak was operating unlicensed STLs in connection with the broadcast operations of both KXDC and KXUU-FM1.

10. The Rules require stations to operate in compliance with applicable technical rules and the terms of the station authorization. Section 74.1235(c) of the Rules states in part that "[t]he effective radiated power of FM booster stations shall be limited such that the predicted service contour of the booster station, computed in accordance with § 73.313 paragraphs (a) through (d) of this chapter, may not extend beyond the corresponding service contour of the primary FM station that the booster rebroadcasts." The KXUU-FM1 booster was licensed for an ERP of 175 watts so as not to extend the service contour of KXDC. On April 18, 2001, booster station KXUU-FM1 had an ERP of 333 watts, which exceeded the licensed power of 175 watts by 90%, and extended the signal beyond the service contour of KXDC.

11. Based on the evidence before us, we find that High Peaks operated radio transmission apparatus without a Commission authorization in willful and repeated violation of Section 301 of the Act and exceeded authorized power in willful violation of Section 74.1235(c) of the Rules. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement"),<sup>10</sup> and Section 1.80 of the Commissions Rules,<sup>11</sup> for unlicensed radio operation is \$10,000 and for exceeding power limits is \$4,000. Application of the base amount to the two instances of unlicensed operations and the violation of the technical parameters of the station's authorization results in a total base forfeiture of \$24,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth

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<sup>6</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>7</sup> Section 312(f)(2), 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

<sup>8</sup> 47 U.S.C. § 301.

<sup>9</sup> 47 C.F.R. § 74.501 *et seq.*

<sup>10</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>11</sup> 47 C.F.R. § 1.80.

in Section 503(b)(2)(D) of the Act,<sup>12</sup> which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. Applying the Forfeiture Policy Statement and statutory factors to the instant case, a \$24,000 forfeiture is warranted.

#### **IV. ORDERING CLAUSES**

12. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Rules, High Peaks Broadcasting, LLC, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of twenty-four thousand dollars (\$24,000) for willfully and repeatedly violating Sections 301 of the Act and willfully violating Section 74.1235(c) of the Rules.<sup>13</sup>

13. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, High Peaks Broadcasting, LLC, SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

14. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC registration number (FRN) and the NAL/Acct. No. referenced in the caption.

15. The response, if any, must be mailed to the Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, and must include the NAL/Acct. No. referenced in the caption.

16. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

17. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>14</sup>

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<sup>12</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>13</sup> 47 U.S.C. §§ 301 and 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, and 74.1235(c).

<sup>14</sup> See 47 C.F.R. § 1.1914.

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail No. 7001 0320 0002 9702 4283 / Return Receipt Requested to High Peaks Broadcasting, LLC, 980 N. Michigan Avenue, Suite 1880, Chicago, Illinois 60611, and courtesy copied to Shainis & Peltzman, Chartered, Attn: Aaron Shainis, 1850 M Street, N.W. - Suite 240, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo  
District Director, Denver Office